

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
BEFORE THE HONORABLE MARY E. ARAND, JUDGE
DEPARTMENT NO. 9

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PALANTIR TECHNOLOGIES, INC.,

Plaintiff,

VS.

CASE NO. 16CV299476

MARC L. ABRAMOWITZ,

Defendant.

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TRANSCRIPT OF PROCEEDINGS
February 13, 2018

APPEARANCES:

For the Plaintiff: BOIES SCHILLER FLEXNER, LLP
BY: JOHN T. ZACH, ATTORNEY
DAVID ZIFKIN, ATTORNEY
JUAN VALDIVIESO, ATTORNEY

For the Defendant: SKADDEN, ARPS, SLATE, MEAGHER & FLOM
BY: ALLEN RUBY, ATTORNEY
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Official Reporter: TALTY COURT REPORTERS, INC.
Cambria Denlinger, CSR 14009



San Jose, California

February 13, 2018

PROCEEDINGS:

THE COURT: Appearances, please.

MR. ZACH: Good morning, your Honor. John Zach and David Zifkin from Boies Schiller on behalf of Plaintiff.

MR. RUBY: Good morning, your Honor. Allen Ruby, Jack DiCanio, and William Casey here for defendants.

THE COURT: And you are?

MR. VALDIVIESO: Juan Valdivieso from Boies Schiller and Flexner on behalf of Palantir.

THE COURT: One lawyer on each side.

So reading through this motion, there were a couple of things in it that I think are not entirely accurate with the law in that they do not need to prove that they have a trade secret to do a trade secret disclosure. They're just doing this to let you know that what they claim their trade secret to be.

Secondly, the Court doesn't look at whether the trade secret is a trade secret, for example, by examining whether or not it's in the public domain or not. So that's not a relevant factor in this. The only question for the Court is whether the trade secret adequately describes the trade secret so we can move forward in the case and do discovery on it.

Now, one thing I think Plaintiff's counsel needs to be aware is the trade secret is it. So if you



1 later tried to expand on what you claim your trade
2 secret to be, you're kind of stuck with what's in this.
3 Do you understand that?

4 MR. ZIFKIN: I do understand that, your Honor.
5 There is case law that there has to be good cause to
6 amend, of course, but we understand that this is our
7 discloser obligation, and that we're moving it to the
8 Court.

9 THE COURT: So, Mr. Ruby, you want to comment
10 on that? This is not a source code case, so they don't
11 need to disclose source code. I've been told source
12 code is not at issue. So in what ways do you think this
13 disclosure is inadequate? And I know that trade secrets
14 can include compilations and that sort of thing, which
15 is kind of what it looks like to me your trade secret
16 is. Is that a fair statement?

17 MR. ZIFKIN: That's fair.

18 THE COURT: So, Mr. Ruby.

19 MR. RUBY: Your Honor, I appreciate the Court's
20 guidance as it said about what they do and do not need
21 to do. From a practical standpoint, this report of the
22 disclosure discloses nothing. It uses buzz words.
23 Everything is a concept and a system and a compilation.
24 There are plenty of those and according to the purported
25 disclosure, it works great. Everybody would want one or
26 more, but it doesn't tell us anything to allow us to
27 defend the case as the statute contemplates we're
28 entitled to defend it.



1 THE COURT: Can I ask what they would need to
2 do for it to be an adequate trade secret disclosure in
3 the context of what they're claiming here?

4 MR. RUBY: Sure. A trade secret disclosure --
5 let me use a phrase that's not classically a legal
6 phrase, but it's useful in this. The trade secret
7 disclosure needs to tell us, as the defendant, what the
8 special sauce is. You know, it can't be conclusory, and
9 can't say it allows the calculation of insurance
10 premiums based on such and such.

11 Well, that's actually a conclusion that that's
12 what it does, but it doesn't say that's what makes it a
13 trade secret. Is it that this product allows people to
14 do things blindfolded? Or to do it with less human
15 resources? Or to do it quicker as shown by such and
16 such?

17 Could I invite the Court, please, if it has the
18 disclosure up there with it --

19 THE COURT: I'm looking for it. It's in here
20 somewhere.

21 MR. ZIFKIN: I have an additional copy if you
22 want.

23 THE COURT: I've got it right here.

24 MR. ZIFKIN: The one thing I would ask, your
25 Honor, is that if counsel -- again, we filed this under
26 seal, and the parties have agreed that pursuant to the
27 Court's issuing a protective order that it will be
28 maintained as being confidential. So I would ask that



1 he not read it out loud, but he, sort of, can summarize
2 it more abstractly. I think that's sort of -- we have
3 to try to maintain its secrecy. I understand he has to
4 make his argument. I want to let him to do that however
5 he can, but I would like to avoid him just reading it
6 wholesale. Directing the Court's attention to it is
7 probably fine.

8 MR. RUBY: I'm not trying to take a cheap shot
9 by getting into the trade secret. The whole point is,
10 I'm trying to answer the Court's question by pointing
11 out that there's no trade secret in here.

12 Could I invite the Court, please, if it would,
13 to, say, look at No. 4. This is a pretty easy target --
14 the whole thing -- but if we could look at No. 4
15 describing something to do with insurance. Are we
16 looking at the same paragraph?

17 There's apparently this product that does or
18 allows for calculating risk and potential damages and
19 premiums. Apparently it's a tool for computing
20 premiums.

21 My point is, if you look at No. 4, that's what
22 every insurance company since the beginning of time has
23 done: Looks at the risk; looks at the cost of a bad
24 event, and allows for the computation of premiums.

25 Well, that's fine. That's describes, perhaps,
26 a lawful business, but it's not a trade secret. There's
27 nothing about it that's secret; that's nothing that even
28 gives a clue as to how it derives economic value from



1 secrecy.

2 So getting back to your Honor's question a
3 minute ago, what would they have to do? Well, if there
4 were a trade secret -- of course, we don't think there
5 is -- but if there were a trade secret that under lay
6 the item that's disclosed in No. 4, it would say What is
7 special about the way it does this? What distinguishes
8 this purported tool from what insurance companies have
9 historically and always done in terms of setting
10 premiums? Look the risk, look at cost, look at pricing.
11 That's what they say they're doing.

12 And, your Honor, if the Court please, the same
13 could be said for every single one of these 39 purported
14 trade secrets. These are generic descriptions. So to
15 use a more formal term "special sauce." What a trade
16 secret disclosure can't do, if it's to comply with the
17 law, is to be generic, to be conclusionary, and generic.
18 And that's all this is.

19 If I were to -- counsel doesn't want me to so I
20 won't read No. 4 into the record -- but --

21 THE COURT: I've just read it.

22 MR. RUBY: Sure. And if No. 4 were to be
23 published on the front page of the San Jose Mercury, so
24 what? What possible secret could be revealed or
25 disclosed by No. 4?

26 This trade secret purported disclosure was done
27 carefully to give away no information. Your Honor is
28 well aware of the pulling and tugging that goes on in



1 alleged trade secret claims.

2 THE COURT: I would have been involved in those
3 cases, yes.

4 MR. RUBY: And your Honor never pulled nor
5 tugged, I'm sure, but for the rest of us, we're doing
6 the best we can. Your Honor is a fount of information,
7 I'm sure, but that's the exception. And the statute
8 maybe doesn't require that degree of forthcomingness,
9 but it requires enough to let us defend.

10 If this were the approved trade secret
11 disclosure, not only are we handicapped in the defense,
12 but let me go, if I could, to your Honor's advisement of
13 the parties that the trade secret disclosure document,
14 absent good cause or unusual circumstances, is what the
15 plaintiff is stuck with.

16 Well, when it's this broad, I mean -- again,
17 use No. 4 for example. If this were the allowed
18 designated trade secret, it's broad enough to describe
19 anything having to do with insurance rates set, isn't
20 it? This is a very, very big tent that they've created
21 here, and that's not fair. There's got to be some
22 limitation that's part of the disclosure. In other
23 words, it has to limit what's disclosed to something
24 that can be understood in a reasonable way, and they
25 can impose boundaries as the litigation goes forward.
26 Otherwise, all the battling that goes on now, as your
27 Honor knows, just gets repeated at every stage.

28 So, there are -- finally, if I may? They



1 say -- we don't necessarily agree with this -- but they
2 say, the trade secret -- their trade secrets -- are
3 disclosed in Mr. Abramowitz's patent applications.

4 THE COURT: Those are public documents.

5 MR. RUBY: That's what they say. And we say,
6 which I think is pretty reasonable, if that were true --
7 that's what they say, okay. One easy way to shortcut a
8 lot of this pulling and tugging would be for them to
9 extract specifically what it is that's in the patent
10 application that they say describes their trade secret
11 instead of dumping on the Court and everybody a big
12 stack of patent applications, and say It's in there.
13 We're assuring you it is. Go find it.

14 They say that it's disclosed in the patent
15 applications. It seems it would be a very small step
16 for them, if that were true, to say Here's where it says
17 X. That describes one of our trade secrets.

18 Why go to the trouble -- I think we know why --
19 but why go to the trouble for a legitimate reason to
20 create a parallel, or a different disclosure, which is
21 as broad and generic as this if, according to them,
22 there are public documents that already describes their
23 trade secrets?

24 MR. ZIFKIN: I would address that in two ways.
25 One is, at this stage, right, this is -- discovery's
26 been stopped. So the moment discovery starts, I expect
27 I'm going to get an interrogatory from my colleague
28 saying Please identify all parts of the patent



1 application in which you identify which map on to this.

2 THE COURT: Why don't you have them in here?
3 I'm not seeing something that says it's, quote, patent
4 application.

5 MR. ZIFKIN: Because I don't think we have to
6 do that at this stage under the law. We'll answer to
7 the interrogatory, that's going to be our obligation.
8 But moving beyond --

9 THE COURT: I suspect I'll see a motion to
10 compel on that one. Let me just start with something I
11 want to do in this case which is to set up a process
12 where you are required to have an informal discovery
13 conference before filing any motion to compel. There's
14 something new in the code about that that I've had in a
15 few cases that I've adopted such a process, but now the
16 code specifically allows me to. There's a new code
17 section that says that, so I'm going to require that for
18 this case.

19 So set it up by calling my clerk, and we'll do
20 Friday at 10:00, something like that. That will be make
21 it easier for us to talk about trade secrets before
22 motions to compel are filed. So that's just a
23 digression.

24 MR. ZIFKIN: That's great. We really
25 appreciate that, and I think we have pretty open
26 dialogue between the sides anyway, so that would be
27 good.

28 So the point is, we -- the disclosure is



1 sufficient enough to let them -- put them on notice to
2 make their defenses and to investigate the borderline of
3 whether or not these things are secrets or whether or
4 not they're generally known. That's what we're entitled
5 to do. That's --

6 THE COURT: This is pretty general. It has a
7 lot of words that don't necessarily, to me, say a lot.
8 And I think this doesn't disclose anything secret. They
9 all start with proprietary business plan concepts this
10 and that does this thing, but it doesn't tell anybody
11 how it does those things.

12 MR. ZIFKIN: For the one that counsel pointed
13 out, No. 4, that does map on to part of the patent
14 application -- one of the patent applications that
15 Mr. Abramowitz filed. And in filing them,
16 Mr. Abramowitz himself is claiming they're novel;
17 they're not known. Those concepts aren't things that
18 are generally out there. So I think he's on board with
19 enough notice to understand that this --

20 THE COURT: So he's filed these patent
21 applications. He's, obviously, claiming he invented
22 these things, so I think that you are under an
23 obligation to tell him what things he claims he invented
24 were in fact -- belonged to you.

25 And so him having filed -- I don't think he's
26 on notice if you simply say he could just look at his
27 own patent applications. I think you need to say what
28 in his patent applications are concepts that belong to



1 your client.

2 MR. ZIFKIN: That's fair. I want to be clear;
3 that's not what we're doing. What we're also doing is
4 he -- counsel started off today arguing that, you know,
5 it's hard for him to understand this because it's filled
6 with buzz words. The language to articulate these
7 secrets are too general. We made a point of referring
8 to the patent applications in our papers to show that
9 these are the same words that are used in the patent.
10 And the same words are used in these areas that they do,
11 in fact -- can understand them. They do understand what
12 we are planning to be our secret, using this type of
13 language, and that that's enough for them to move
14 forward.

15 That's why we did the side-by-side with the
16 bold because, you know, they keep saying I don't
17 understand what this means; this isn't specific enough,
18 but it really does map on to what they're saying.

19 THE COURT: I do think Mr. Ruby has a point in
20 that this looks like the universe of ideas, and I think
21 you do have an obligation to narrow it down to something
22 that is your trade secret and describe it more
23 specifically, because this is so generic, it could
24 include a whole, huge number of things. And I think
25 this document does need to do that narrowing in some
26 respects.

27 MR. ZIFKIN: The one thing -- I mean, we
28 respect the Court's opinion on that, obviously. The one



1 thing I'd like to point out is that it's not an all or
2 nothing sort of proposition. He's pointing to one.

3 They had another one that they were able to
4 understand, No. 13, which was already publicly
5 disclosed.

6 THE COURT: I don't think that's relevant for
7 this analysis, but in any event --

8 MR. ZIFKIN: That's right. But the point being
9 they're able to actually achieve the statutory goal that
10 the trade secret law is in place to advance, and they
11 can do that. And I think the parties are able to line
12 up discovery going forward.

13 We're more than happy to answer that
14 interrogatory when we get it, but I don't think it
15 should be a way to delay discovery in the context of a
16 protective order going forward. That will delay the
17 case; they're going to get that information anyway. The
18 disclosure is sufficient to meet the statutory bar at
19 this very discrete stage -- early stage.

20 MR. RUBY: Well, I think counsel, respectfully,
21 misunderstands what the legislature did here. The
22 legislature prescribed -- or requires the plaintiff in a
23 trade secret case -- every plaintiff -- to do something
24 before discovery starts. And what the plaintiff needs
25 to do is describe their trade secrets in a reasonable
26 fashion -- I don't want to be repeating myself. The
27 idea that well, we're on notice. That's a word that
28 should give the Court some real pause. This is not a



1 matter of the notice pleading. This is a special
2 statute for special purposes to allow defendants to have
3 some special protection in trade secret cases, and
4 that's a legislative judgment that these kind of cases
5 need that degree of protection.

6 The idea that somehow a defendant is on notice
7 of something distorts the burden here. What -- this is
8 not a subjective test. Well, yeah, but Mr. Abramowitz,
9 he probably understands this. He probably understands
10 that. He can read the tea leaves.

11 The statute isn't set up that way. The statute
12 is a uniform requirement requiring every plaintiff to
13 lay out his or her trade secret in a reasonable way to
14 allow the defense and the discovery to go forward. So I
15 think trying to shortcut that with the idea that
16 somebody is on notice of something is not a helpful path
17 to efficient litigation and doesn't harmonize, in my
18 respectful opinion, of the statute.

19 THE COURT: Two minutes.

20 MR. ZIFKIN: So, you know, the standard is
21 reasonable particularity. And the reasonable
22 particularity so they can go out and investigate the
23 claims and prepare their defenses, and our disclosure
24 actually does that. We're not saying that
25 Mr. Abramowitz should know or he shouldn't. We think
26 our disclosure is sufficient enough. I do think it is
27 telling that Mr. Abramowitz wasn't even shown this
28 disclosure. So they claim to not understand it, but



1 they sort of -- they're clear in their papers that they
2 didn't bother to show it to him. And it's important
3 because we're all working together to try to understand
4 these things so we can focus the litigation and make it
5 go efficiently. It's because they know what the words
6 are and the language are because they really do map on
7 to the language used by Mr. Abramowitz, and I think our
8 disclosure is sufficient, and that they'll be able to
9 acquire the information they want once discovery starts,
10 which should be immediately. Thank you, your Honor.

11 MR. RUBY: I'll submit the matter, your Honor.

12 THE COURT: I think you need to make this more
13 detailed. I do think it's too general. I think you
14 need to -- and, no, I'm not going to take any more
15 argument. For example, I think you do need to point out
16 where in the patent your trade secrets are found. This
17 does not do that. I think you need to give -- the
18 descriptions are so general it could apply to any number
19 of things, and I think it needs to clearly lay out what
20 your trade secrets are. So I'm going to require you
21 amend this, say, within 20 days.

22 MR. ZIFKIN: Can I propose one thing, your
23 Honor? I take their point; they want the specific
24 citations to the patent applications. We'll do that --

25 THE COURT: Not just that. To the extent
26 there's something broader in the patent applications, I
27 think you need to lay it out here with more specificity
28 than is found here. In looking at this, I can't tell



1 what your trade secret might be and how you go about
2 doing certain things to accomplish the things that are
3 here. So I think it needs to be more specific.

4 MR. ZIFKIN: Well, we will amended, your Honor.
5 The thing is, we would like to do this on an expedited
6 basis, because we are -- this case has been going on for
7 quite some time. They tried to move to federal court,
8 and we got it sent back to your Honor.

9 THE COURT: You know, that's something that
10 defendants can do in cases like this. And, yes, the
11 federal court sent it back. You can amend it anytime
12 you want. And I think you submitted an order. I don't
13 know if you have any comments on the order, but -- and I
14 don't know if you want to modify the order, Mr. Ruby, or
15 not but -- trying to find it. The order staying
16 discovery.

17 MR. RUBY: Your Honor, if the court please,
18 rather than consume the Court's time this morning, I
19 will recirculate a copy of the proposed order to
20 counsel. If they have comments, we'll try to work that
21 out and present to the Court something we can agree on
22 immediately, and if we can't, we'll submit competing
23 orders.

24 THE COURT: So looking at your proposed order,
25 it provides that all discovery shall be stayed until
26 Palantir submits the disclosure that complies with
27 Section 292.210. That's a little bit vague. Who makes
28 the decision of whether they have complied? Ultimately,



1 it might be me, but when you get it, you need to -- I'm
2 going to expect you to communicate with them and say
3 this is enough to be going on to file another motion
4 immediately. And I know it's tough to get hearing dates
5 with me. This is something that maybe we can set on
6 Friday at 10:00 so we can have a little more complete
7 discussion.

8 MR. RUBY: Understood.

9 MR. ZIFKIN: That will be very helpful, your
10 Honor, to the extent they're --

11 THE COURT: But I don't think it should be
12 generic until it complies. I think there needs to be
13 some standard and who decides it and why. If you think
14 it's become adequate, then you need to just start
15 doing -- allowing discovery to happen.

16 MR. RUBY: I understand, your Honor, and we'll
17 work out some compliance order with your Honor.

18 MR. ZIFKIN: Thank you, your Honor.

19 MR. RUBY: Thank you.

20 (Whereupon, the proceedings were concluded
21 at 9:46 a.m.)

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